

REPRESENTATIVE FOR PETITIONER:

Robert C. Brown, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Kristie L. Dressel, Center Township Assessor

Robert W. Metz, Commercial Supervisor, Center Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|---------------------------|---|------------------|---------------------|
| Robert C. Brown Trust, |) | Petition Nos.: | 45-042-03-1-5-00004 |
| |) | | 45-042-03-1-5-00005 |
| Petitioner, |) | | 45-042-03-1-5-00006 |
| |) | | 45-042-03-1-5-00007 |
| |) | | |
| v. |) | Parcels: | 003-31-25-0077-0007 |
| |) | | 003-31-25-0077-0008 |
| |) | | 003-31-25-0077-0009 |
| Center Township Assessor, |) | | 003-31-25-0077-0006 |
| |) | | |
| Respondent. |) | County: | Lake |
| |) | Township: | Center |
| |) | | |
| |) | Assessment Year: | 2003 |

Appeal from the Final Determination of
Lake County Property Tax Assessment Board of Appeals

April 1, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence,
and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the assessed value of the land exceeds its market value-in-use.

PROCEDURAL HISTORY

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Center Township Assessor's 2003 assessment of the subject property on March 8, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on April 5, 2007, petitioning the Board to conduct an administrative review of the subject property's 2003 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on January 13, 2009, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Robert C. Brown, taxpayer's representative,
Carol Brown, witness for the taxpayer,

For the Respondent:

Kristie L. Dressel, Center Township Assessor,
Robert W. Metz, Commercial Supervisor, Center Township.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1-2 – Photographs of the subject dwelling.

7. The Respondent did not present any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 Petitions
 - Board Exhibit B – Notices of Hearing dated November 7, 2008
 - Board Exhibit C – Sign-in Sheet.
9. The properties under appeal are a residential lot improved with a dwelling, Parcel No. 003-31-25-0077-0007 (Parcel 7), and three vacant residential lots, Parcel No. 003-31-25-0077-0008 (Parcel 8), Parcel No. 003-31-25-0077-0009 (Parcel 9), and Parcel No. 003-31-25-0077-0006 (Parcel 6) located at 6817 W. 128th Lane, Cedar Lake.
10. The ALJ did not conduct an on-site inspection of the subject properties.
11. For 2003, the PTABOA determined the assessed value of Parcel 7 to be \$7,900 for the land and \$17,200 for the improvements, for a total assessed value of \$25,100. The PTABOA determined the assessed values of Parcel 6, Parcel 8, and Parcel 9 to be \$6,300 each.¹
12. For 2003, the Petitioner did not contest the improvement value on Parcel 7 but contends that the total assessed value for the land on Parcel 6, Parcel 7, Parcel 8 and Parcel 9 should be \$18,000 or \$19,000.

¹ The record is not clear on the assessed value of the parcels. The Form 115 did not have any assessed values recorded. *Board Exhibit A*. A spreadsheet purportedly attached to the 115 identified the subject parcels and identified the amount of the 2004/2005 tax. A handwritten note purported to identify the assessed value of each parcel.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

17. The Petitioner contends the assessed value of the land is excessive and presented the following evidence in support of its contentions:
 - A. The Petitioner's representative testified that the Petitioner is not contesting the assessed value of the dwelling but contends the lots are over-valued compared to lots in a new subdivision located across the street which sell for \$30,000.
R. Brown testimony. According to Mr. Brown, the lots in the subdivision are improved with utilities, roads, and sidewalks, which are not shared with the subject property. *Id.* Thus, the Petitioner argues, the total assessed value for the land should be \$18,000 to \$19,000. *Id.*
 - B. The Petitioner further contends that before the reassessment the taxes were about \$35 per lot. *R. Brown testimony.* According to the Petitioner, the current taxes are excessive. *Id.*

18. The Respondent contends the property is correctly assessed and presented the following evidence:
 - A. The Respondent contends the Petitioner is comparing his lots with lots in a new subdivision which may be considered as a different neighborhood and have a different base rate than the subject lots. *Metz testimony.*
 - B. The Respondent further contends the Petitioner's evidence supports its assessment. *Metz testimony.* According to Mr. Metz, the subject properties total approximately 100 feet by 101 feet and together are assessed for \$26,800, while according to the Petitioner the subdivision lots sell for \$30,000. *Metz testimony.*

ANALYSIS

19. The 2002 Real Property Assessment Manual defines “true tax value” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
20. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
21. Here, the Petitioner’s representative testified that lots in a nearby subdivision sell for \$30,000 and have improvements that the subject parcels do not have. The Petitioner therefore contends that the subject land should be at valued at no more than \$18,000 to \$19,000 together. The Petitioner offered no support for this contention. A conclusory statement is insufficient to establish a prima facie case of error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704

N.E. 2d 1113, 1122 (Ind. Tax 1998). See *College Corner, L.P. v. Department of Local Gov't Finance*, 840 N.E.2d 905, 907-8 (Ind. Tax Ct. 2006)

23. The Petitioner also contends the taxes on the lots are excessive compared to previous years. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 716 N.E.2d 904,908 (Ind. Tax Ct. 2001), citing *Matanovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over matters involving local tax rates.²
24. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

25. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

² Further, each tax year stands on its own. *Barth v. State Board of Tax Commissioners*, 699 N.E.2d 800, 805 n.14 (Ind. Tax Ct. 1998). Consequently, the taxes that the Petitioner paid in prior years is not relevant or probative of the Petitioner's 2003 taxes or assessment.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at

<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.